



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-74438; File No. SR-CBOE-2015-022]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Equipment and Communication on the Exchange's Trading Floor

March 4, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 20, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange seeks to amend its rules related to equipment and communication on the Exchange's trading floor

(additions are italicized; deletions are [bracketed])

* * * * *

**Chicago Board Options Exchange, Incorporated
Rules**

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule 6.23. [Trading Permit Holder Wires from Floor] Equipment and Communications on the Trading Floor

(a) Subject to the requirements of this Rule Trading Permit Holders may use any communication device (e.g., any hardware or software related to a phone, system or other device, including an instant messaging system, e-mail system or similar device) on the floor of the Exchange and in any trading crowd of the Exchange. The Exchange reserves the right to designate certain portions of this rule as not applicable to certain classes on a class by class basis.

(b) The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Trading Permit Holder to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

(c) Any communication device may be used on the floor of the Exchange and in any trading crowd of the Exchange to receive orders, provided that audit trail and record retention requirements of the Exchange are met; however, no person in a trading crowd or on the floor of the Exchange may use any communication device for the purpose of recording activities in the trading crowd or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers digital recorders, intercoms, walkie-talkies and any similar devices.

(d) After providing notice to an affected Trading Permit Holder and complying with applicable laws, the Exchange may provide for the recording of any telephone line on the floor of the Exchange or may require Trading Permit Holders at any time to provide for the recording of a fixed phone line on the floor of the Exchange. Trading Permit Holders, and their clerks, using the telephones consent to the Exchange recording any telephone or line.

(e) Trading Permit Holders may not use communication devices to disseminate quotes and/or last sale reports originating on the floor of the Exchange in any manner that would serve to provide a continuous or running state of the market for any particular series or class of options over any period of time; provided, however, that an associated person of a Trading Permit Holder on the floor of the Exchange may use a communication device to communicate quotes that have been disseminated pursuant to Rule 6.43 and/or last sale reports to other associated persons of the same Trading Permit Holder business unit. An associated person of a Trading Permit Holder may also use a communications device to communicate an occasional, specific quote that has been disseminated pursuant to Rule 6.43 or last sale report to a person who is not an associated person of the same Trading Permit Holder.

(f) Use of any communications device for order routing or handling must comply with all applicable laws, rules, policies and procedures of the Securities and Exchange Commission and the Exchange including related to record retention and audit trail requirements. Orders must be

systemized using Exchange systems or proprietary systems approved by the Exchange in accordance with Rule 6.24.

(g) Trading Permit Holders must maintain records of the use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to Rule 17.2

(h) The Exchange may designate, via circular, specific communication devices that will not be permitted on the floor of the Exchange or Exchange trading crowds. In addition, the Exchange may designate other operational requirements regarding the installation of any communication devices via circular.

[(a) No Trading Permit Holder shall establish or maintain any telephone or other wire communications between his or its office and the Exchange without prior approval by the Exchange. The Exchange may direct discontinuance of any communication facility terminating on the floor of the Exchange.

(b) Equity Option Telephone Policy. Persons in the equity option trading crowds (including DPM crowds which trade equity options) may have access to outside telephone lines and may receive telephone orders directly at equity options posts from locations outside the Exchange, subject to certain requirements. The Exchange will review and may approve any applications to install or to use telephones in the equity option crowds.

(1) Requirements and conditions that apply to the use of telephone services at the equity option posts shall include the following:

(A) Only those quotations that have been publicly disseminated pursuant to Rule 6.43 may be provided over telephones at the post.

(B) Trading Permit Holders may give their clerks their PIN access code. Although both Trading Permit Holders and clerks may use telephones, Trading Permit Holders will have priority. Each Trading Permit Holder will be responsible for all calls made using that Trading Permit Holder's PIN access code.

(C) Clerks will not be permitted to establish a base of operation utilizing general use telephones at the equity option posts. This means, for example, that a clerk may not monopolize the use of a telephone receiver on a telephone that has multiple lines if all of those lines are not dedicated to the Trading Permit Holder for whom the clerk works.

(D) The Exchange may provide for the taping of any telephone line into the equity option posts or may require Trading Permit Holders to provide for the tape recording of a dedicated line at the equity option posts at any time. Trading Permit Holders and their clerks using the telephones consent to the Exchange tape recording any telephone or line.

(E) The telephones may be used for voice service only, unless they have been specifically approved for other uses.

(F) The Exchange may prohibit the use of any telephone technology that interferes with the normal operation of the Exchange's own systems or facilities or that the Exchange determines interferes with its regulatory duties.

(G) Orders transmitted by registered Exchange market-makers may be entered over the outside telephone lines directly to the equity option posts. All other orders may be entered over the outside telephone lines to the equity option posts only during outgoing telephone calls that are initiated at the equity option posts.

(H) Only those individuals that are properly qualified in accordance with Chapter IX of the Rules of the Exchange, and all other applicable rules and regulations, may accept orders from public customers pursuant to this Rule.

. . . Interpretations and Policies:

.01 A Trading Permit Holder or TPH organization which has been granted approval of any means of communication under this rule shall be responsible for assuring compliance with all Exchange rules and requirements in connection with any business conducted by means of such electronic or telephonic communication.]

* * * * *

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules regarding equipment and communication on the Exchange trading floor. More specifically, the Exchange is proposing to delete the current rule on the topic, Exchange Rule 6.23, and introduce more relevant rules governing the use of communication devices³ on the Exchange trading floor.⁴ Exchange and Trading Permit Holder (“TPH”) systems have become much more electronic since the adoption of CBOE Rule 6.23; however, the rule has not been updated to reflect the electronic environment. The Exchange believes it is in the interest of TPHs to allow electronic communications to and from the Exchange trading floor and that these amendments will eliminate confusion that may arise from outdated Exchange rules. As such, the Exchange believes that eliminating the current rule in its entirety and promulgating language that contemplates modern rules is appropriate.⁵

First, Rule 6.23 is currently applicable to “telephone or other wire communications.”⁶ Proposed Rule 6.23(a) expands the applicability of Rule 6.23 and provides that TPHs may use any communication device⁷ on the Exchange trading floor and in any Exchange trading crowd subject to the restrictions in proposed Rule 6.23. The Exchange is also proposing to apply these

³ As proposed, “communication device” will include “e.g., any hardware or software related to a phone, system or other device, including an instant messaging system, e-mail system or similar device[.]”

⁴ Although the Exchange seeks to replace Rule 6.23 in its entirety, portions of the current rule are included in proposed Rule 6.23. The relevant holdover language is identified where applicable.

⁵ Many of the provisions of proposed Rule 6.23 are modeled after NYSE Amex LLC (“Amex”) Rule 902NY(i) – Telephones on the Trading Floor and NYSE Arca, Inc. (“Arca”) Rule 6.(h) [sic] – Telephones on the Options Floor.

⁶ See CBOE Rule 6.23(a).

⁷ See supra note 1 [sic].

restrictions on a class by class basis. The Exchange believes this discretion is appropriate as different classes of options on the trading floor behave differently, and, as such, different means of communication might be more appropriate in one options class but not in another.

Next, proposed Rule 6.23(b) specifically states that the Exchange will retain the authority to deny, limit or revoke the use of any communication device.⁸ Under the proposed rule, the Exchange may take such actions whenever it determines that use of such communication device: (1) interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties⁹, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a TPH to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act of 1934 ("the Act") or rules thereunder, or the Exchange rules. This authorization will allow the Exchange to regulate the equipment and communications on the Exchange trading floor and in the Exchange trading crowds to ensure they are not disruptive to the operation of the Exchange or in violation of the Act. The Exchange believes this will allow the Exchange to better protect investors and the integrity of the market. The Exchange notes, however, that current Rule 6.23(a) requires TPHs to receive prior approval from the Exchange before establishing or maintaining a telephone or other wire communications.¹⁰ In addition, the Exchange recognizes that AMEX and ARCA rules require the registration of all new telephones¹¹ and approval prior to the use of a communication device other than a telephone. The Exchange believes the combination of the record retention requirements of proposed Rule 6.23(g) and the power to revoke the use of a

⁸ Proposed Rule 6.23(c) [sic] is similar to Amex Rule 902NY(i)(6) and Arca Rule 6.2(h)(6).

⁹ This language remains from the current CBOE Rule 6.23. See CBOE Rule 6.23(b)(1)(F).

¹⁰ See CBOE Rule 6.23(a).

¹¹ See Amex Rule 902NY(i)(1) and Arca Rule 6.2(h)(1).

communication device pursuant to proposed Rule 6.23(b) negates the necessity for prior approval and registration. If an issue with a particular device is discovered, the Exchange will work with TPHs to ensure the devices are no longer utilized.

Next, proposed Rule 6.23(c) codifies the current policy that allows any communication device to be utilized to receive orders in and out of the trading crowd, provided that audit trail and record retention requirements of the Exchange are met.¹² Formerly, CBOE Regulatory Circular RG10-20 prohibited TPH's [sic] from receiving orders in the trading crowd via instant messaging or e-mail;¹³ however, TPHs were not restricted from receiving orders via instant messaging and e-mail while not in a trading crowd. The Exchange believes the difference caused inequity between TPHs because TPHs near the edge of the trading crowd can more quickly correspond with their clerks and trading desks that are outside of the trading crowd. The Exchange believes that removing the restriction on receiving orders via IM and e-mail levels the playing field in the trading crowds and reflects the electronic nature of the current marketplace. In addition, proposed Rule 6.23(c) specifically prohibits the use of any communication device to record activities in the trading crowd or to maintain an open line of continuous communication that would allow a non-associated person off of the Exchange floor to continuously monitor the activities in the trading crowd. As proposed, this prohibition covers digital recorders, intercoms, walkie-talkies and any similar devices. The addition of this text will preserve the integrity of the Exchange trading floor while monitoring TPHs to ensure they have the required authorization to operate on the Exchange trading floor should that be their intent.¹⁴

¹² See CBOE Regulatory Circular RG14-162 (November 19, 2014).

¹³ See CBOE Regulatory Circular RG10-20 (January 29, 2010).

¹⁴ Proposed Rule 6.23(c) is similar to Amex Rule 902NY(i)(2) and Arca Rule 6.2(h)(2).

Further, proposed Rule 6.23(d) specifies that, after providing notice to an affected Trading Permit Holder and complying with the applicable laws, the Exchange may provide for the recording of any telephone line on the floor of the Exchange or require TPHs to provide for the recording of a fixed phone line on the floor of the Exchange, and that TPHs utilizing telephones consent to the Exchange recording any telephone or line.¹⁵ This added provision will not require but allow the Exchange to record any communications via telephone connections to the trading floor if a situation where [sic] to arise where this may be necessary. In addition, this proposed provision would allow the Exchange to provide necessary equipment for the recording of communications on the Exchange trading floor.¹⁶

Next, proposed Rule 6.23(e) prohibits the use of communication devices to disseminate quotes and/or last sale reports originating on the Exchange trading floor in any manner that would serve to provide a continuous or running state of the market; however, the proposed rule specifically states that, “an associated person of a TPH may use a communications device to communicate quotes that have been disseminated pursuant to Rule 6.43 and/or last sale reports to other associated persons of the same TPH business unit.” Further, as proposed, an associated person of a TPH may use a communications device to communicate an “occasional, specific, quote that has been disseminated pursuant to Rule 6.43¹⁷ or last sale report or quote to a person who is not an associated person of the same TPH.” The Exchange believes this proposed addition is necessary to allow the use of instant messaging or e-mail as the industry has grown to

¹⁵ This language remains from the current CBOE Rule 6.23. See CBOE Rule 6.23 (b)(1)(D).

¹⁶ Proposed Rule 6.23(d) is similar to Amex Rule 902NY(i)(3)(C) and Arca Rule 6.2(h)(3)(C).

¹⁷ Proposed Rule 6.23(e) referring to quotes disseminated pursuant to Rule 6.43 is similar to Amex Rule 902NY(i)(3)(A) and Arca Rule 6.2(h)(3)(A). See CBOE Rule 6.43 – Manner of Bidding and Offering.

become more and more reliant upon technology. The Exchange, however, also thinks it is important that any communications made within TPH organizations should be within the same business unit so that TPHs are not abusing the privilege and allowing for communication of the activity on the Exchange trading floor to be disseminated to unrelated areas of the TPH.

Next, proposed Rule 6.23(f) requires that any use of any communications device on the trading floor shall comply with applicable laws, rules, policies, and procedures of the Commission and Exchange including all record retention and audit trail requirements. Proposed Rule 6.23(f) would also require that orders are systemized using Exchange systems or proprietary systems approved by the Exchange in accordance with Exchange Rule 6.24.¹⁸ This proposed addition would ensure that any communications device on the Exchange's trading floor or in the Exchange trading crowds will follow any and all other applicable statutes [sic] including the Act along with ensure [sic] that orders are properly systematized. In addition, proposed Rule 6.23(f) will allow misconduct to be investigated if regulatory issues arise after the adoption of a new communication device.

Next, proposed Rule 6.23(g) requires TPHs to maintain records related to the "use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place." Although

¹⁸ Orders must be systematized in accordance with Rule 6.24 (Required Order Information). Generally, subject to certain exceptions, each order, cancellation of, or change to an order transmitted to the Exchange must be "systematized," in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if: (i) the order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (e.g., telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.

similar to Amex and Arca Rules on the subject,¹⁹ the Exchange added language referring to emails and chats to reflect the current electronic environment. In addition, proposed rule 6.23(g) states that “[t]he Exchange reserves the right to inspect such records pursuant to Rule 17.2.”²⁰ As previously noted, the proposed Rule will allow misconduct to be investigated if regulatory issues arise after the adoption of a new communication device. This requirement is consistent with the retention period of Securities and Exchange Commission Rule 17a-4.²¹

Finally, proposed Rule 6.23(h) authorizes the Exchange to designate more specific communication devices that will not be permitted on the Exchange trading floor or other operational requirements via circular. Given the propensity for technology to continue to evolve, the Exchange believes this proposed text will allow the Exchange to change the exact requirements from time to time as needed while continuing to provide TPHs specifications on the allowed technology and communication mechanism.

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the approval date. The implementation date will be no later than 60 days following the approval of the proposed changes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the

¹⁹ Proposed Rule 6.23(g) is similar to Amex Rule 902NY(i)(5) and Arca NYSE Arca Rule 6.2(h)(5).

²⁰ CBOE Rule 17.2 (b) – Requirements to Furnish Information. Rule 17.2(b) requires TPHs and persons associated with TPHs to, among other things, “furnish documentary materials and other information requested by the Exchange in connection with (i) an investigation initiated pursuant to paragraph (a) of this Rule[.]”

²¹ 17 CFR 240.17a-4.

Exchange and, in particular, the requirements of Section 6(b) of the Act.²² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange does not believe the proposed changes are unfairly discriminatory as they are applied to all TPHs trading on the Exchange trading floor, a similarly situated group, equally. In addition, the Exchange believes the proposed changes [sic] designed to prevent fraudulent and manipulative acts and practices because they are more appropriately designed to monitor the equipment and communications on a modern trading floor. Without the proposed changes, the current Exchange rules do not adequately address the relevant communication tools. Finally, the Exchange believes that the proposed rules intend to foster cooperation and coordination by introducing new means of communication to the Exchange trading floor. Finally, the Exchange believes that the proposed changes protect investors and the public interest by ensuring that all equipment and communication on the Exchange trading floor will adhere to all other applicable statutes and the Act.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ Id.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. More specifically, the Exchange does not believe that the proposed rule changes will impose any [sic] intramarket competition because it [sic] will be applicable to all TPHs trading on the Exchange trading floor. In addition, the Exchange does not believe the proposed changes will impose any intermarket burden because the Exchange trading floor will operate in a similar manner only with more relevant equipment and communication requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission invites comment on CBOE's proposal to no longer require a member to obtain prior approval from CBOE before using a new communication device on the CBOE

floor and instead adopt the open-ended approach in proposed paragraph (c) of Rule 6.23 under which a member would be permitted to use any communication device unless specifically otherwise prohibited and would not be required to seek Exchange approval or otherwise register the communication devices with the Exchange in advance of using them on the CBOE floor.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2015-022 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-022, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Brent J. Fields
Secretary

[FR Doc. 2015-05484 Filed: 3/9/2015 08:45 am; Publication Date: 3/10/2015]

²⁵ 17 CFR 200.30-3(a)(12).